

§ 220.176

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- (a) His or her impairment(s) improves;
- (b) He or she returns to work;
- (c) He or she increases the amount of work; or
- (d) His or her earnings increase.

§ 220.176 When disability continues or ends.

There is a statutory requirement that, if an annuitant is entitled to a disability annuity, the annuitant's continued entitlement to such an annuity must be reviewed periodically until the employee or child annuitant reaches full retirement age and the widow(er) annuitant reaches age 60. When the annuitant is entitled to a disability annuity as a disabled employee, disabled widow(er) or as a person disabled since childhood, there are a number of factors to be considered in deciding whether his or her disability continues. The Board must first consider whether the annuitant has worked and, by doing so, demonstrated the ability to engage in substantial gainful activity. If so, the disability will end. If the annuitant has not demonstrated the ability to engage in substantial gainful activity, then the Board must determine if there has been any medical improvement in the annuitant's impairment(s) and, if so, whether this medical improvement is related to the annuitant's ability to work. If an impairment(s) has not medically improved, the Board must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to ability to work has not occurred and no exception applies, the disability will continue. Even the medical improvement related to ability to work has occurred or an exception applies (see § 220.179 for exceptions), in most cases the Board must also show that the annuitant is currently able to engage in substantial gainful activity before it can find that the annuitant is no longer disabled.

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§ 220.177 Terms and definitions.

There are several terms and definitions which are important to know in order to understand how the Board re-

views whether a disability for any regular employment continues:

(a) *Medical improvement.* Medical improvement is any decrease in the medical severity of an impairment(s) which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on a comparison of prior and current medical evidence showing changes (improvement) in the symptoms, signs or laboratory findings associated with the impairment(s).

Example 1: The claimant was awarded a disability annuity due to a herniated disc. At the time of the Board's prior decision granting the claimant an annuity he had had a laminectomy.

Postoperatively, a myelogram still shows evidence of a persistent deficit in his lumbar spine. He had pain in his back, and pain and a burning sensation in his right foot and leg. There were no muscle weakness or neurological changes and a modest decrease in motion in his back and leg. When the Board reviewed the annuitant's claim to determine whether his disability should be continued, his treating physician reported that he had seen the annuitant regularly every 2 to 3 months for the past 2 years. No further myelograms had been done, complaints of pain in the back and right leg continued especially on sitting or standing for more than a short period of time. The annuitant's doctor further reported a moderately decreased range of motion in the annuitant's back and right leg, but again no muscle atrophy or neurological changes were reported. Medical improvement has not occurred because there has been no decrease in the severity of the annuitant's back impairment as shown by changes in symptoms, signs or laboratory findings.

Example 2: The claimant was awarded a disability annuity due to rheumatoid arthritis. At the time, laboratory findings were positive for this impairment. The claimant's doctor reported persistent swelling and tenderness of the claimant's fingers and wrists and that he complained of joint pain. Current medical evidence shows that while laboratory tests are still positive for rheumatoid arthritis, the annuitant's impairment has responded favorably to therapy so that for the last year his fingers and wrists have not been significantly swollen or painful. Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairment as documented by the current symptoms and signs

reported by his physician. Although the annuitant's impairment is subject to temporary remission and exacerbations, the improvement that has occurred has been sustained long enough to permit a finding of medical improvement. The Board would then determine if this medical improvement is related to the annuitant's ability to work.

(b) *Medical improvement not related to ability to do work.* Medical improvement is not related to the annuitant's ability to work if there has been a decrease in the severity of the impairment(s) (as defined in paragraph (a) of this section) present at the time of the most recent favorable medical decision, but no increase in that annuitant's functional capacity to do basic work activities as defined in paragraph (d) of this section. If there has been any medical improvement in an annuitant's impairment(s), but it is not related to the annuitant's ability to do work and none of the exceptions applies, the annuity will be continued.

Example: An annuitant was 65 inches tall and weighed 246 pounds at the time his disability was established. He had venous insufficiency and persistent edema in his legs. At the time, the annuitant's ability to do basic work activities was affected because he was able to sit for 6 hours, but was able to stand or walk only occasionally. At the time of the Board's continuing disability review, the annuitant had undergone a vein stripping operation. He now weighed 220 pounds and had intermittent edema. He is still able to sit for 6 hours at a time and to stand or walk only occasionally although he reports less discomfort on walking. Medical improvement has occurred because there has been a decrease in the severity of the existing impairment as shown by his weight loss and the improvement in his edema. This medical improvement is not related to his ability to work, however, because his functional capacity to do basic work activities (i.e., the ability to sit, stand and walk) has not increased.

(c) *Medical improvement that is related to ability to do work.* Medical improvement is related to an annuitant's ability to work if there has been a decrease in the severity (as defined in paragraph (a) of this section) of the impairment(s) present at the time of the most recent favorable medical decision and an increase in the annuitant's functional capacity to do basic work activities as discussed in paragraph (d) of this section. A determination that medical improvement related to an annuitant's

ability to do work has occurred does not, necessarily, mean that such annuitant's disability will be found to have ended unless it is also shown that the annuitant is currently able to engage in substantial gainful activity as discussed in paragraph (e) of this section.

Example 1: The annuitant has a back impairment and has had a laminectomy to relieve the nerve root impingement and weakness in his left leg. At the time of the Board's prior decision, basic work activities were affected because he was able to stand less than 6 hours, and sit no more than ½ hour at a time. The annuitant had a successful fusion operation on his back about 1 year before the Board's review of his entitlement. At the time of the Board's review, the weakness in his leg has decreased. The annuitant's functional capacity to perform basic work activities now is unimpaired because he now has no limitation on his ability to sit, walk, or stand. Medical improvement has occurred because there has been a decrease in the severity of his impairment as demonstrated by the decreased weakness in his leg. This medical improvement is related to his ability to work because there has also been an increase in his functional capacity to perform basic work activities (or residual functional capacity) as shown by the absence of limitation on his ability to sit, walk, or stand. Whether or not his disability is found to have ended, however, will depend on the Board's determination as to whether he can currently engage in substantial gainful activity.

Example 2: The annuitant was injured in an automobile accident receiving a compound fracture to his right femur and a fractured pelvis. When he applied for disability annuity 10 months after the accident his doctor reported that neither fracture had yet achieved solid union based on his clinical examination. X-rays supported this finding. The annuitant's doctor estimated that solid union and a subsequent return to full weight bearing would not occur for at least 3 more months. At the time of the Board's review 6 months later, solid union had occurred and the annuitant had been returned to full weight-bearing for over a month. His doctor reported this and the fact that his prior fractures no longer placed any limitation on his ability to walk, stand, and lift, and, that in fact, he could return to full-time work if he so desired.

Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairments as shown by x-ray and clinical evidence of solid union and his return to full weight-bearing. This medical improvement is related to his ability to work because he no longer meets the same listed impairment in appendix 1 of this part

(see § 220.178(c)(1)). Whether or not the annuitant's disability is found to have ended will depend on the Board's determination as to whether he can currently engage in substantial gainful activity.

(d) *Functional capacity to do basic work activities.* (1) Under the law, disability is defined, in part, as the inability to do any regular employment by reason of a physical or mental impairment(s). "Regular employment" is defined in this part as "substantial gainful activity." In determining whether the annuitant is disabled under the law, the Board will measure, therefore, how and to what extent the annuitant's impairment(s) has affected his or her ability to do work. The Board does this by looking at how the annuitant's functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and non-exertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes in a work setting and dealing with both supervisors and fellow workers. The annuitant who has no impairment(s) would be able to do all basic work activities at normal levels; he or she would have an unlimited functional capacity to do basic work activities. Depending on its nature and severity, an impairment(s) will result in some limitation to the functional capacity to do one or more of these basic work activities. Diabetes, for example, can result in circulatory problems which could limit the length of time the annuitant could stand or walk and can result in damage to his or her eyes as well, so that the annuitant also had limited vision. What the annuitant can still do, despite his or her impairment(s), is called his or her residual functional capacity. How the residual functional capacity is assessed is discussed in more detail in § 220.120. Unless an impairment is so severe that it is deemed to prevent the annuitant from doing substantial gainful activity (i.e., the impairment(s) meets or equals the severity of a listed impairment in appendix 1 of this part), it is this residual functional capacity that is used to

determine whether the annuitant can still do his or her past work or, in conjunction with his or her age, education and work experience, do any other work.

(2) A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities. Vascular surgery (e.g., femoropopliteal bypass) may sometimes reduce the severity of the circulatory complications of diabetes so that better circulation results and the annuitant can stand or walk for longer periods. When new evidence showing a change in medical findings establishes that both medical improvement has occurred and the annuitant's functional capacity to perform basic work activities, or residual functional capacity, has increased, the Board will find that medical improvement which is related to the annuitant's ability to do work has occurred. A residual functional capacity assessment is also used to determine whether an annuitant can engage in substantial gainful activity and, thus, whether he or she continues to be disabled (see paragraph (e) of this section).

(3) Many impairment-related factors must be considered in assessing an annuitant's functional capacity for basic work activities. Age is one key factor. Medical literature shows that there is a gradual decrease in organ function with age; that major losses and deficits become irreversible over time and that maximum exercise performance diminishes with age. Other changes related to sustained periods of inactivity and the aging process include muscle atrophy, degenerative joint changes, decrease in range of motion, and changes in the cardiac and respiratory systems which limit the exertional range.

(4) Studies have also shown that the longer the annuitant is away from the workplace and is inactive, the more difficult it becomes to return to ongoing gainful employment. In addition, a gradual change occurs in most jobs so that after about 15 years, it is no longer realistic to expect that skills and abilities acquired in these jobs will

continue to apply to the current workplace. Thus, if the annuitant is age 50 or over and had been receiving a disability annuity for a considerable period of time, the Board will consider this factor along with his or her age in assessing the residual functional capacity. This will ensure that the disadvantages resulting from inactivity and the aging process during a longer period of disability will be considered. In some instances where available evidence does not resolve what the annuitant can or cannot do on a sustained basis, the Board may provide special work evaluations or other appropriate testing.

(e) *Ability to engage in substantial gainful activity.* In most instances, the Board must show that the annuitant is able to engage in substantial gainful activity before stopping his or her annuity. When doing this, the Board will consider all of the annuitant's current impairments not just that impairment(s) present at the time of the most recent favorable determination. If the Board cannot determine that the annuitant is still disabled based on medical considerations alone (as discussed in §§ 220.110 through 220.115), it will use the new symptoms, signs and laboratory findings to make an objective assessment of functional capacity to do basic work activities (or residual functional capacity) and will consider vocational factors. See §§ 220.120 through 220.134.

(f) *Evidence and basis for the Board's decision.* The Board's decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that the annuitant had previously been determined to be disabled. The Board will consider all of the evidence the annuitant submits. An annuitant must give the Board reports from his or her physician, psychologist, or others who have treated or evaluated him or her, as well as any other evidence that will help the board determine if he or she is still disabled (see § 220.45). The annuitant must have a good reason for not giving the Board this information or the Board may find that his or her disability has ended (see § 220.178(b)(2)). If the Board asks the annuitant, he or she

must contact his or her medical sources to help the Board get the medical reports. The Board will make every reasonable effort to help the annuitant in getting medical reports when he or she gives the Board permission to request them from his or her physician, psychologist, or other medical sources. Every reasonable effort means that the Board will make an initial request and, after 20 days, one follow-up request to the annuitant's medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the follow-up to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances the Board may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that an annuitant's disability has ended, the Board will develop a complete medical history covering at least the preceding 12 months (See § 220.45(b)). A consultative examination may be purchased when the Board needs additional evidence to determine whether or not an annuitant's disability continues. As a result, the Board may ask the annuitant, upon the Board request and reasonable notice, to undergo consultative examinations and tests to help the Board determine whether the annuitant is still disabled (see § 220.50). The Board will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 220.53 through 220.54.

(g) *Point of comparison.* For purposes of determining whether medical improvement has occurred, the Board will compare the current medical severity of that impairment(s), which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled, to the medical severity of that impairment(s) at that time. If medical improvement has occurred, the Board will compare the annuitant's current functional capacity to do basic work activities (i.e., his or her residual functional capacity) based on this previously existing impairment(s) with

the annuitant's prior residual functional capacity in order to determine whether the medical improvement is related to his or her ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether the annuitant was disabled or continued to be disabled which became final.

§ 220.178 Determining medical improvement and its relationship to the annuitant's ability to do work.

(a) *General.* Paragraphs (a), (b), and (c) of § 220.177 discuss what is meant by medical improvement, medical improvement not related to the ability to work and medical improvement that is related to the ability to work. How the Board will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed in paragraphs (b) and (c) of this section.

(b) *Determining if medical improvement is related to ability to work.* If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, the Board then must determine if it is related to the annuitant's ability to do work. In § 220.177(d) the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect the annuitant's residual functional capacity is explained. In determining whether medical improvement that has occurred is related to the annuitant's ability to do work, the Board will assess the annuitant's residual functional capacity (in accordance with § 220.177(d)) based on the current severity of the impairment(s) which was present at that annuitant's last favorable medical decision. The annuitant's new residual functional capacity will then be compared to the annuitant's residual functional capacity at the time of the Board's most recent favorable medical decision. Unless an increase in the current residual functional capacity is based on changes in the signs, symptoms, or laboratory findings, any medical improvement that has occurred will not be considered to be re-

lated to the annuitant's ability to do work.

(c) *Additional factors and considerations.* The Board will also apply the following in its determinations of medical improvement and its relationship to the annuitant's ability to do work:

(1) *Previous impairment met or equaled listings.* If the Board's most recent favorable decision was based on the fact that the annuitant's impairment(s) at the time met or equaled the severity contemplated by the Listing of Impairments in appendix 1 of this part, an assessment of his or her residual functional capacity would not have been made. If medical improvement has occurred and the severity of the prior impairment(s) no longer meets or equals the same listing, the Board will find that the medical improvement was related to the annuitant's ability to work. Appendix 1 of this part describes impairments which, if severe enough, affect the annuitant's ability to work. If the Listing level of severity is met or equaled, the annuitant is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the requirement of the listing is no longer met or equaled, then the medical improvement is related to the annuitant's ability to work. The Board must, of course, also establish that the annuitant can currently engage in gainful activity before finding that his or her disability has ended.

(2) *Prior residual functional capacity assessment made.* The residual functional capacity assessment used in making the most recent favorable medical decision will be compared to the residual functional capacity assessment based on current evidence in order to determine if an annuitant's functional capacity for basic work activities has increased. There will be no attempt made to reassess the prior residual functional capacity.

(3) *Prior residual functional capacity assessment should have been made, but was not.* If the most recent favorable medical decision should have contained an assessment of the annuitant's residual functional capacity (i.e., his or her impairment(s) did not meet or equal the level of severity contemplated by